Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

Rickie Allen Wilson

Petitioner

v.

State of Colorado

Respondent

On Petition For Writ Of Certiorari
To The Supreme Court of Colorado

PETITION FOR WRIT OF CERTIORARI

Rickie Allen Wilson
33735 Isham Jones Rd.
Pine, Colorado 80470
303-838-7669

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Supreme Court of Colorado erred in not correcting the Colorado Court of Appeals and the lower trial court by declaring the statutes, under which Wilson (petitioner herein) was charged, are unconstitutionally vague, as they do not set out with specificity the acts or omissions which constitute a violation.

2. Whether the Supreme Court of Colorado erred in not correcting the Colorado Court of Appeals and the lower trial court by recognizing violation of Wilson's 6th Amendment protected Right to Assistance of Counsel where no willing, fully informed and knowing waiver of such Right was made by Wilson.

3. Whether the Supreme Court of Colorado erred in not correcting the Colorado Court of Appeals and the lower trial court by recognizing violation of Wilson's 6th Amendment protected Right to be "informed of the nature and cause of the accusations".

4. Whether the Supreme Court of Colorado erred in not correcting the Colorado Court of Appeals and the lower trial court, by not reversing judgment of the trial court, for lack of jurisdiction and violation of Wilson's 4th Amendment protected Right against

unreasonable seizure of his person, as well as, violation of his 5th and 14th Amendment protected Right to not be deprived of liberty without due process of law, due to fraudulent information contained in the affidavit in support of arrest warrant.

5. Whether the Supreme Court of Colorado erred in not correcting the Colorado Court of Appeals and the lower trial court when they did not recognize the supremacy of Supreme Court of the United States decisions in accordance with The Constitution for These United States of America at Article VI, Clause 2, to wit:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

6. Whether the Supreme Court of Colorado erred in not correcting the Colorado Court of Appeals and the lower trial court, by reversing judgment, due to denial

of due process, which resulted from the trial court's failure to incorporate Wilson's proposed jury instructions in the court's final jury instructions. This error resulted in the jury being deprived of applicable fact and law of the case, upon which to make their decision, and violates Supreme Court of the United States decisions.

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OPINIONS BELOW

The order of the Supreme Court of Colorado striking Motion for Rehearing was issued January 14, 2005 and appears at Appendix a2.

The order of the Supreme Court of Colorado denying Petition for Writ of Certiorari to the Colorado Court of Appeals was issued December 27, 2004 and appears at Appendix a3.

The order of the Colorado Court of Appeals denying rehearing was issued October 18, 2004 and appears at Appendix a5.

The order of the Colorado Court of Appeals affirming judgment was issued July 15, 2004 and appears at Appendix a7. This is unpublished.

JURISDICTION

The Supreme Court of Colorado denied Petition for Writ of Certiorari December 27, 2004. Timely application for rehearing was submitted January 7, 2005 and was stricken on January 14, 2005.

The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTUTIONAL PROVISIONS INVOLVED

The 4th Article of Amendment to The Constitution for These United States of America provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The 5th Article of Amendment to The Constitution for These United States of America provides, in relevant part: "nor be deprived of life, liberty, or property, without due process of law;"

The 6th Article of Amendment to The Constitution for These United States of America provides, in relevant part: "to be informed of the nature and cause of the accusation; ***, and to have the Assistance of Counsel for his defence."

The 14th Amendment to the U.S. Constitution provides, in relevant part: "nor shall any State deprive any person of life, liberty, or property, without due process of law * * *."

STATEMENT

In all instances cited below, the record was transmitted through the normal channels from trial court to Court of Appeals by certification and transmission of the record by the clerk of the trial court and from Court of Appeals to Supreme Court by the clerk of Court of Appeals, to best of Wilson's knowledge.

1. The Supreme Court of Colorado erred in not correcting the Colorado Court of Appeals, and the lower trial court, in its rejection of Wilson's claim of unconstitutionality of the statute, for vagueness.

The statute at issue is Colorado Revised Statute 39-21-118(1) to wit:

> "(1) Any person who willfully attempts in any manner to evade or defeat any tax administered by the department or the payment thereof, in addition to other penalties provided by law, is guilty of a class 5 felony and, upon conviction thereof, shall be punished as provided in section 18-1.3-401, C.R.S., or shall be punished by a fine of not more than one hundred thousand dollars, or five hundred thousand dollars in the case of a corporation, or by both

such fine and imprisonment, together with the costs of prosecution."

The only place that specifically defines those actions which constitute "evasion" are found in **47B CJS 1278, note 58**, to wit:

> "An affirmative, willful attempt to evade income taxes may be inferred from conduct such as concealment of assets or covering up income, or sources of income, making false entries or alterations, or other false records, destruction of records, failing during course of investigation to supply any information for purposes of computation, assessment or collection of income tax when such failure is unjustified, or failure to include substantial amount of income in tax return, and any conduct the likely effect of which would be to mislead or to conceal."

While this description of the term "evade" is readily understood by the average Citizen, this is hardly a readily available source of information for him or her. Failure of the statute to specifically notice the average

Citizen of the proscribed conduct results in a denial of due process, as in this case, and should have resulted in the Supreme Court of Colorado and/or the Colorado Court of Appeals reversing judgment.

> "When a person of ordinary intelligence does not receive fair notice that his contemplated conduct is forbidden, prosecution for such conduct deprives him of due process." **US v Matthews**, 787 F2nd 38 (2nd Cir. 1986), **US v Nevers**, 7 F3d 59 (5th Cir. 1993).

> "Due process is violated by criminal statute when men of ordinary intelligence must guess at meaning of statutes." **US v Moody**, 977 F2nd 1420 (11th Cir. 1992); **Becker v Lockhart**, 971 F2nd 172 (8th Cir. 1992); **US v Murphy**, 809 F2nd 1427 (9th Cir. 1987).

This issue was first raised in Wilson's pretrial "Motion to Dismiss" (R56)[1], entered in the record on January 2, 2002, which outlines with great specificity the legal basis for this challenge. This issue was again

[1] The designation (R___) refers to the transcript page from the trial court.

raised in Wilson's "Motion For New Trial" (R261) entered on September 3, 2002. This issue was preserved and again raised to the Colorado Court of Appeals in Wilson's Notice of Appeal entered on December 18, 2002 and again in Wilson's Opening Brief entered on June 27, 2003. This issue was raised to the Supreme Court of Colorado in Wilson's Petition for Writ of Certiorari entered on October 15, 2004 and again in Wilson's Motion for Rehearing entered on January 7, 2005.

2. The Supreme Court of Colorado erred in not recognizing that the Colorado Court of Appeals assertion, that no evidence was on record that Wilson's Right to Assistance of Counsel was violated, was erroneous. The record of proceedings of the trial does not reflect a "waiver of counsel" by Wilson, under any circumstances. Unlike the "Waiver of Preliminary Hearing" form, and the "Waiver of Speedy Trial" (R157) entered April 2, 2002, the record contains no "Waiver of Counsel" form executed by Wilson.

Pursuant to the Constitution of the State of Colorado, Article II Bill of Rights, Section 16 Annotations at subsection II(F):

> "A waiver cannot be knowing and intelligent unless the record clearly establishes that the defendant understands: **The nature of the charges; the statutory offenses included within them**; the range of allowable punishments; possible defenses to the charges and circumstances in mitigation; all of the facts essential to a broad understanding of the whole matter; and the requirement of complying with the rules of procedure at trial. People v. Arguello, 772 P.2d 87 (Colo. 1989); People v. Stanley, 56 P.3d 1241 (Colo. App. 2002)." [emphasis added]

The trial court's failure to meet this requirement is evidenced by Item 3 below, wherein Wilson's attempt to gain understanding of the "nature and cause of the accusation" is shown to have been denied and thwarted by the trial court's denial of his motion for a "Bill of Particulars".

This issue was first raised in Wilson's "Verified Motion for Sanctions" (R32) entered during the pretrial phase in the trial court on October 11, 2001. This issue was again raised in Wilson's "Motion For New Trial" (R261) entered on September 3, 2002.

This issue was preserved and again raised to the Colorado Court of Appeals in Wilson's Notice of Appeal entered on December 18, 2002 and again in Wilson's Opening Brief entered on June 27, 2003. This issue was raised to the Supreme Court of Colorado in Wilson's Petition for Writ of Certiorari entered on October 15, 2004 and again in Wilson's Motion for Rehearing entered on January 7, 2005.

3. The Supreme Court of Colorado and Colorado Court of Appeals erred when they failed to reverse judgment upon Wilson demonstrating that the trial court violated Wilson's 6th Amendment protected Right to "be informed of the nature and cause of the accusation". This violation occurred when trial court denied Wilson's "Motion for a Bill of Particular's" (R44), entered in the pretrial phase of the trial court on December 6, 2001, which is marked "denied" (R103) on February 8, 2002, and is plainly a violation of Wilson's Rights as demonstrated in the following cites:

> "Trial cannot be fair unless nature of charges against defendant are adequately made known to him or her in timely fashion." **Sheppard v**

Rees, 909 F2nd 1234 (9th Cir. 1990).

"Function of bill of particulars is to provide defendant with necessary details of charges against him to enable him to prepare his defense, to avoid surprise against trial, and to protect against double jeopardy." **US v Abreu**, 952 F2nd 1458 (1st Cir. 1992).

The fact that it took the trial court two months to deny this motion was "untimely" and prejudiced Wilson. This issue was again raised in Wilson's "Motion For New Trial" (R261) entered on September 3, 2002. This issue was preserved and again raised to the Colorado Court of Appeals in Wilson's Notice of Appeal entered on December 18, 2002 and again in Wilson's Opening Brief entered on June 27, 2003. This issue was raised to the Supreme Court of Colorado in Wilson's Petition for Writ of Certiorari entered on October 15, 2004 and again in Wilson's Motion for Rehearing entered on January 7, 2005.

4. The Supreme Court of Colorado and the Colorado Court of Appeals erred in not recognizing the failure of the trial court to uphold Wilson's Right to Judicial

Due Process. Wilson's expose of the items of fraudulent information, contained in the affidavit in support of arrest warrant, are a matter of the court record (R169) and renders any judgment void per the Colorado Rules of Civil Procedure 60(b)(2), to wit:

> **"(b) Mistakes; Inadvertence; Surprise; Excusable Neglect; Fraud; etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;"

and also:

> "Fraud vitiates the most solemn contracts, documents, and **even judgments**." **U.S. vs. Throckmorton**, 98 U.S. 61 (1878). [emphasis added]

This issue was first raised in Wilson's pretrial "Motion to Dismiss" (R56), entered in the record on January 2, 2002 and again in Wilson's "Motion For

New Trial" (R261) entered on September 3, 2002. This issue was preserved and again raised to the Colorado Court of Appeals in Wilson's Notice of Appeal entered on December 18, 2002 and again in Wilson's Opening Brief entered on June 27, 2003. This issue was raised to the Supreme Court of Colorado in Wilson's Petition for Writ of Certiorari entered on October 15, 2004 and again in Wilson's Motion for Rehearing entered on January 7, 2005.

5. The Supreme Court of Colorado and the Colorado Court of Appeals erred in not reversing judgment due to the trial court's failure to take "Mandatory Judicial Notice" of the public record (R212), which was later admitted as evidence (Exhibit #8 - -page 80). This evidence supports Wilson's contention of reliance upon prior Supreme Court of the United States' decisions and the trial court erred in not dismissing the case pursuant to Wilson's "Repsonse To Response To Defendant's Motion To Dismiss For Failure To State Offense"(sic) (R154) where such reliance and the controlling case law are cited, to that court, at R156.

> "The requirement of an offense committed willfully is not met, therefore if a taxpayer has

relied in good faith upon a prior decision of the court." **U.S. v. Bishop**, 412 U.S. 346, 93 S.Ct. 2008 (1972), **U.S. v. Sullivan**, 274 U.S. 259 (1926).

Further, the trial court's erred in not applying the law, as handed down by the Supreme Court of the United States in the case of **Cheek v. United States**, 498 U.S. 192 (1991), constitutes reversible error, to wit:

> "A good-faith misunderstanding of the law or a good-faith belief that one is not violating the law negates willfulness, whether or not the claimed belief or misunderstanding is objectively reasonable. Statutory willfulness, which protects the average citizen from prosecution for innocent mistakes made due to the complexity of the tax laws, *United States v. Murdock,* 290 U.S. 389, is the voluntary, intentional violation of a known legal duty. *United States v. Pomponio,* 429 U.S. 10. Thus, if the jury credited Cheek's assertion that he truly believed that the Code did not treat wages as income, the Government would not have carried its burden to prove willfulness, however

unreasonable a court might deem such a belief."

This issue was first raised in Wilson's pretrial "Motion For Mandatory Judicial Notice" (212) entered in the trial court on August 8, 2002 and again in Wilson's "Motion For New Trial" (R261) entered on September 3, 2002. Wilson's Motion for Mandatory Judicial Notice was never acted upon by the trail court. This issue was preserved and again raised to the Colorado Court of Appeals in Wilson's Notice of Appeal entered on December 18, 2002 and again in Wilson's Opening Brief entered on June 27, 2003. This issue was raised to the Supreme Court of Colorado in Wilson's Petition for Writ of Certiorari entered on October 15, 2004 and again in Wilson's Motion for Rehearing entered on January 7, 2005.

6. The Supreme Court of Colorado and the Colorado Court of Appeals erred in not reversing judgment due to error by the trial court in not submitting Wilson's proposed Jury Instructions (R161) to the jury. This error is evidenced by the trial court's Jury Instructions (R220), which did not contain any of the requested or mandatory instructions relative to "willfulness", as it relates to tax cases. Failure to supply the requested

jury instructions constitutes reversible error as those jury instructions directly relate to the "willfulness" element of the charged crimes.

> "As a general proposition a defendant is entitled to an instruction as to any recognized defense for which there exists evidence sufficient for a reasonable jury to find in his favor" **Mathews v United States**, 485 U.S. 58 (1987).

This issue was first raised in Wilson's "Request for Jury Instructions" (R161), during pretrial phase, entered in the record on April 1, 2002. This issue was again raised in Wilson's "Motion For New Trial" (R261) entered on September 3, 2002. This issue was preserved and again raised to the Colorado Court of Appeals in Wilson's Notice of Appeal entered on December 18, 2002 and again in Wilson's Opening Brief entered on June 27, 2003. This issue was raised to the Supreme Court of Colorado in Wilson's Petition for Writ of Certiorari entered on October 15, 2004 and again in Wilson's Motion for Rehearing entered on January 7, 2005.

REASONS FOR GRANTING THE PETITION

There are several obvious violations of constitutionally protected rights by the trial court and abdication of the responsibility of the Colorado Court of Appeals and the Supreme Court of Colorado to recognize these violations and provide a remedy, as required by their charters and the bonds of common decency.

Further, the Supreme Court of Colorado, the Colorado Court of Appeals and the trial court's failures to abide by the decisions of the Supreme Court of the United States may not be allowed to stand as they are an affront to the supremacy of this court as declared within The Constitution for These United States of America at Article VI, Clause 2.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Rickie Allen Wilson

January 2005

APPENDIX

Order striking Motion for Rehearing –

Supreme Court of Colorado a2

Order denying Petition for Writ of Certiorari -

Supreme Court of Colorado a3

Order denying Motion for Rehearing –

Colorado Court of Appeals a5

Order Affirming Judgment -

Colorado Court of appeals a7

SUPREME COURT, STATE OF COLORADO
TWO EAST 14TH AVENUE
DENVER, COLORADO 80203

CERTIORARI TO THE COURT OF APPEALS
02CA2521
DISTRICT COURT, CITY & COUNTY OF
DENVER, 01CR3611

Petitioner:
RICKIE ALLEN WILSON,
v.
Respondent:
THE PEOPLE OF THE STATE OF COLORADO

ORDER OF COURT

Upon consideration of the Motion for Rehearing filed in the above cause, and now being sufficiently advised in the premises,
IT IS THIS DAY ORDERED that said Motion shall be, and the same hereby is, STRICKEN.

SUPREME COURT, STATE OF COLORADO
(seal)
BY THE COURT, JANUARY 14, 2005

SUPREME COURT, STATE OF COLORADO
TWO EAST 14TH AVENUE
DENVER, COLORADO 80203

CERTIORARI TO THE COURT OF APPEALS
02CA2521
DISTRICT COURT, CITY & COUNTY OF
DENVER, 01CR3611

Petitioner:
RICKIE ALLEN WILSON,
v.
Respondent:
THE PEOPLE OF THE STATE OF COLORADO

ORDER OF COURT

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, briefs, and the judgment of said Court of Appeals,
IT IS THIS DAY ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

SUPREME COURT, STATE OF COLORADO

(seal)

BY THE COURT, EN BANC, DECEMBER 27, 2004.

COLORADO COURT OF APPEALS

No. 02CA2521

September 16, 2004

ORDER DENYING PETITION FOR REHEARING

PEOPLE OF THE STATE OF COLORADO,

PLAINTIFF-APPELLEE

v.

RICKIE ALLEN WILSON,

DEFENDANT-APPELLANT

Appeal from the DENVER DISTRICT CRIMINAL COURT

Honorable SHEILA A RAPPAPORT, Judge

Honorable MARTIN F EGELHOFF, Judge

No. 01CR3611

The PETITION FOR REHEARING filed in this appeal by: RICKIE ALLEN WILSON DEFENDANT-APPELLANT is DENIED.

Issuance of the Mandate is stayed until: October 18, 2004.

If a Petition for Certiorari is timely filed with the Supreme Court of Colorado, then the stay shall remain in effect until disposition of the cause by that Court.

By the Court:

RULAND, J.

WEBB, J.

RUSSEL, J.

COPIES MAILED TO COUNSEL OF RECORD

AND Pro Se

ON 9-16-04

BY ACG

COLORADO COURT OF APPEALS

COLORADO COURT OF APPEALS

Court of Appeals No. 02CA2521

City and County of Denver District Court No. 01CR3611

Honorable Sheila A. Rappaport, Judge

Honorable Martin F. Egelhoff, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Rickie Allen Wilson,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division V

Opinion by JUDGE RULAND*

Webb and Russel, JJ., concur

NOT PUBLISHED PURSUANT TOC.A.R. 35(f)

July 15, 2004

Ken Salazar, Attorney General, Patricia R. Van Horn, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Rickie Allen Wilson, Pro Se

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2003.

Defendant, Rickie Allen Wilson, appeals from the judgment of conviction entered upon jury verdicts finding him guilty of income tax evasion for the years 1997, 1998, 1999, and 2000 in violation of § 39-21-118(1), C.R.S. 2003. He also appeals from the judgment of conviction entered upon jury verdicts finding him guilty of failure to file a return for the years 1997, 1998, and 1999 in violation of § 39-21-118(3), C.R.S. 2003. We affirm.

Defendant was convicted following a jury trial in which apparently numerous witnesses testified. However, he has failed to furnish this court with any transcript of that proceeding.

I.

Without citation to legal authority, defendant first contends that the state statutes defining the offenses for which he was convicted are unconstitutionally vague because the enactments fail to describe "with specificity the acts or omissions which constitute a violation."

We are not persuaded.

Statutes are presumed to be constitutional, and defendant bears the burden to demonstrate otherwise. People v. Longoria, 862 P.2d 266 (Colo. 1993). A

statute is not unconstitutionally vague if people of ordinary intelligence understand its meaning and if they do not differ as to its application. See People v. Wood, 743 P.2d 422 (Colo. 1987); People v. Summit, __ P.3d __ (Colo. App. No. 02CA1483, Apr. 8, 2004). As pertinent here, § 39-21-118(1), C.R.S. 2003, imposes a criminal penalty upon one who willfully evades payment of any tax administered by the Department of Revenue. Evade means to circumvent or dodge. Webster's Third New International Dictionary 786 (1986). In our view this concept is readily understood by people of ordinary intelligence and thus, we perceive no constitutional infirmity in the statute.

Section 39-21-118(3), C.R.S. 2003, imposes a criminal penalty upon one who willfully fails to file a return for any particular year. Defendant totally fails to specify what aspect of the statutory language contains some element of vagueness.

Hence, we do not further address his constitutional challenge. See People v. Parrish, 879 P.2d 453 (Colo. App. 1994)(claims not raised with any specificity on appeal need not be addressed).

II.

Again, without citation to legal authority, defendant claims that the trial court committed reversible error in not excusing any state or local governmental employee from the jury panel because these individuals are compensated from the proceeds of taxation. He also argues that the court erred in failing to remove an employee of the Denver Revenue Department.

We disagree with both contentions.

Grounds for disqualification of a prospective juror are limited to the items contained in § 13-71-105, C.R.S. 2003.

None of the enumerated grounds include those relied upon by defendant here. There is otherwise no showing in the record before this court that the individuals in question held some type of impermissible bias by virtue of their employment. Hence, we find no error.

III.

Contrary to defendant's contention, the record fails to reveal that his waiver of the right to counsel was invalid or coerced. See People v. Gandiaga, 70 P.3d 523 (Colo. App. 2002) (a party must supply those parts of the record necessary to demonstrate that

reversible error took place in the trial court).

IV.

Defendant contends that the trial court erred in denying his motion for a bill of particulars filed prior to trial. He also argues that the court erred in allowing the prosecution "to add additional charges to the original four counts which did not substantially differ from the original four counts and constituted an illegal stacking of charges." We find no merit in these contentions.

Defendant is required to demonstrate some significant prejudice from the court's rulings before reversal of the convictions is warranted. See C.A.R. 35(e). On this record defendant has failed to make that showing and we find no legal support for the conclusion that the additional charges were in some manner improperly stacked.

V.

We reject defendant's contention that certain items of allegedly false information contained in the affidavit supporting his arrest warrant deprived the court of jurisdiction to proceed. We are unaware of legal precedent that supports such a conclusion. See Westtrac, Inc. v. Walker Field, 812 P.2d 714 (Colo.

App. 1991) (a party should inform the court both of the errors relied upon, and the legal authorities to support the claims of error).

VI.

Defendant claims that numerous errors occurred in the trial of this case that require reversal of his convictions. These allegations include error in the admission of evidence, in failing to admit certain evidence, in failing to grant defendant's motions for acquittal, and in failing to grant defendant's motion for mandatory judicial notice. These allegations also include error in the failure to give defendant's tendered jury instructions, in the failure to strike or disallow testimony from two experts, in permitting the prosecutor and the court to "coach" defendant during the trial, and in the failure of the court to grant defendant's motion for acquittal notwithstanding the verdict. We decline to address these contentions. As noted, defendant has the burden on appeal to demonstrate error from the record of the trial proceedings. See People v. Gandiagra, supra. If, as here, no such record is provided, then we must presume that the trial court's rulings were correct. See People v. Bishop, 7 P.3d 184 (Colo. App. 1999).

And, contrary to defendant's contention, we may not substitute the information contained in his unverified motion for new trial for the transcript of the proceedings simply because the prosecution failed to object in writing to the contents of his motion. Indeed, the prosecution is not required to file a written response to the motion. See Crim. P. 33.

The judgment is affirmed.

JUDGE WEBB and JUDGE RUSSEL concur.